

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

July 2

In the Matter of)
)
Further Forbearance from) GN Docket No. 94-33
Title II Regulation for Certain)
Types of Commercial Mobile)
Radio Service Providers)

REPLY COMMENTS OF RADIOFONE, INC.

Radiofone, Inc. (Radiofone), by its attorneys, and pursuant to Sections 1.415 and 1.419 of the Commission's Rules,¹ respectfully submits these reply comments concerning the Notice of Proposed Rule Making (Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers), GN Docket No. 94-33, FCC 94-101, released May 4, 1994 [hereinafter NPRM].

Radiofone submits that the Commission should forbear from applying Section 225 of the Communications Act of 1934, as amended (the Act),² concerning the Telecommunications Relay Service (TRS) Fund, to small cellular providers.

I. Interest of Radiofone

Radiofone, Inc. is the licensee for frequency block A in the Domestic Public Cellular Radio Telecommunications Service for New Orleans, Louisiana MSA, Louisiana 8 - St. James RSA, Louisiana 9 - Plaquemines RSA, Michigan 5 -

¹ 47 C.F.R. §§ 1.415, 1.419 (1993).

² 47 U.S.C. § 225.

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Radiofone also has a controlling interest in Baton Rouge Cellular Telephone Company Partnership, which is the licensee for frequency block A in the Domestic Public Cellular Radio Telecommunications Service for the Baton Rouge, Louisiana MSA. Furthermore, Radiofone has a controlling interest in Houma Thibodaux Cellular Partnership, which is the licensee for frequency block A in the Domestic Public Cellular Radio Telecommunications Service for the Houma-Thibodaux, Louisiana MSA.

II. The Commission Should Forbear from Applying Section 225 of the Act to Small Cellular Carriers

Radiofone submits that the Commission should forbear from applying the TRS Fund requirements of Section 225 of the Act to small cellular carriers, since the public interest would not be served by unnecessarily placing burdens on these carriers with little or no corresponding benefit.³

A. TRS Fund Contribution Requirements for Small Cellular Carriers Should Be Eliminated

The current TRS Fund rules require cellular carriers to make contributions proportional to those made by wireline

³ See NPRM, para. 5 (forbearance may be applied where the costs of compliance outweigh the benefits).

carriers. These requirements place disproportionate burdens on cellular carriers, because there are inherent difficulties in using text telephones with cellular systems. For example, using a text telephone in an automobile requires the driver to type on and read the display of the device while continuing to drive. Radiofone submits that due to these difficulties in using cellular TRS, there is a proportionately smaller number of cellular subscribers using TRS than the number of wireline telephone subscribers using TRS. The Commission therefore should forbear from requiring small cellular carriers to make contributions to the TRS Fund.⁴

B. The TRS Fund Data Reporting Requirements Should Be Eliminated, or at a Minimum, Streamlined

In the event that the Commission continues to require small cellular carriers to make contributions to the TRS Fund, Radiofone submits that the TRS Fund data reporting requirements are not appropriate for small cellular carriers and should be eliminated.

Radiofone, a private corporation, and Baton Rouge Cellular Telephone Company Partnership and Houma Thibodaux Cellular Partnership, as partnerships, do not need to file

⁴ See generally Cellular, Inc. Reply Comments, CC Docket No. 90-571, April 19, 1993, at 2-5 (stating that TRS Fund requirements would be unduly burdensome for cellular carriers, and requesting confidential treatment of their revenue information).

information about their revenues with any other governmental organization, including the Securities and Exchange Commission. The Commission is the sole governmental agency requesting such information from these small carriers.

The TRS Fund rules do not provide for the confidentiality of the information on the TRS Fund Worksheet. Because that information may be obtained by the Commission from NECA, it subsequently could be made publicly available via Freedom of Information Act requests. Radiofone submits that the data could end up in the hands of competitors. And if the data were obtained by competitors, it could have the effect of harming competition⁵ -- counter to the Commission's oft-stated goal of encouraging competition in the interexchange marketplace.⁶

This potential harm to competition could uniquely impact small carriers, such as Radiofone. Radiofone therefore submits that the data reporting requirements for small cellular carriers should be eliminated, or at a minimum, tailored to reflect the small volume of interstate

⁵ See Cellular Telecommunications Industry Association Comments, CC Docket No. 90-571, at 5 (requiring cellular carriers to submit financial information "might provide competitors with access to information that is competitively sensitive").

⁶ See, e.g., Report and Order (Competition in the Interstate Interexchange Marketplace), 6 FCC Rcd. 5880 (1991).

cellular TRS usage.⁷ For example, the TRS Fund Worksheet could simply require small cellular carriers to certify to having less than the threshold amount of interstate revenues that requires payment of the minimum amount (e.g., \$100 in 1994), if appropriate. Other small cellular carriers that have more than the threshold amount of interstate revenues, could simply be required to report their total interstate revenues, without having to report their gross revenues and interstate revenues for each service category listed on the TRS Fund Worksheet. This would permit the Commission to continue to obtain monetary support for the TRS Fund while eliminating unnecessary accounting procedures for small cellular carriers.

Additionally, this elimination, or streamlining, of the TRS Fund data reporting requirement meets the public interest prong of the three-part test for forbearance.⁸ The TRS Fund will still receive contributions, but the potential for release of private revenue information would be eliminated or reduced.

The TRS Fund data reporting requirements were developed pursuant to the Americans with Disabilities Act of 1990

⁷ See NABER Comments, at 8 ("accounting costs required to discern the proper TRS fee, together with the prospect for audit review, could make the process burdensome for many CMRS providers"). Cf. American Mobile Telecommunications Association, Inc. Comments, at 13 ("the reporting and filing obligations of TRS are a significant burden on these small businesses").

⁸ NPRM, para. 4.

which requires the costs of interstate TRS to be recovered from every interstate service, 47 U.S.C. § 225(d)(3)(B). However, the Budget Act now provides the Commission with the opportunity to modify its data reporting requirements. Radiofone requests the Commission to use this opportunity to modify the TRS Fund rules -- to reflect Radiofone's privacy interests in this regard and protect Radiofone's competitive interests -- by forbearing from applying the data reporting requirement to small cellular carriers, in the event that the Commission does not eliminate TRS Fund contributions altogether.

III. Definition of Small Carriers

Radiofone submits that should the Commission decide to apply further forbearance to small cellular providers, the Commission could use either of two alternative definitions for "small carriers." For example, the Commission could use the \$100,000,000 revenue standard used to distinguish Class A and Class B telephone companies.⁹ Alternatively, the Commission could use the \$125,000,000 in revenues / \$500,000,000 in assets standard recently adopted for the entrepreneur band for PCS.¹⁰

⁹ See 47 C.F.R. § 32.11 (1993).

¹⁰ News Release, Commission Adopts Competitive Bidding Procedures for Broadband PCS (PP Docket No. 93-253), June 29, 1994.

Should the Commission adopt further forbearance for small carriers, Radiofone would object to the imposition of affirmative reporting requirements for small providers, as suggested in the NPRM, para. 39. Such affirmative reporting requirements would eviscerate any benefits of applying forbearance to the TRS Fund reporting requirements. Radiofone submits that at the most, small carriers should be required to certify their compliance with the standards for eligibility for further forbearance, and to make such certifications on application forms for mobile services licenses or on annual reports filed with the Commission.

CONCLUSION

For the foregoing reasons, Radiofone respectfully requests the Commission to forbear from applying the TRS Fund requirements of Section 225 of the Act to small cellular carriers.

Respectfully submitted,
RADIOFONE, INC.

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Dated: July 12, 1994

CERTIFICATE OF SERVICE

I, Christa Sanden, hereby certify that I am an employee of the firm Blooston, Mordkofsky, Jackson & Dickens, and that on the 12th day of July, 1994, I caused to be hand-delivered the foregoing "**REPLY COMMENTS OF RADIOFONE, INC.**" to the following:

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